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MEMORANDUM
January 27, 2005

COUNTY OF KAUAI

TO: Lani Nakazawa, County Attorney
Ian Costa, Planning Director

'05 JAN 31 AM 1:19

FROM: JoAnn A. Yukimura, Planning Committee Chair

PLANNING DEPT.

RE: Inconsistencies with the CZO as it relates to Transient
Vacation Rentals

The interpretation of the Comprehensive Zoning Ordinance as related to vacation rentals continues to be debated among many in the community. While we understand that your office stands behind former Deputy County Attorney Blaine Kobayashi's opinion dated July 11, 2000, I want to ask, based on discussions with public members who have been involved with this issue since 2000, that your office reexamine the Comprehensive Zoning Ordinance and the conclusion of Kobayashi's opinion. Even though your office may decide to confirm the Kobayashi opinion, a recognition and discussion of the inconsistencies within the CZO and between the CZO and General Plan would be useful to identifying and clarifying both documents and the legal and planning framework for vacation rentals, which we would like to do in developing a bill to address the issue.

In that light, I request a written and oral response addressing the following "inconsistencies" within the Comprehensive Zoning Ordinance as you provide either a confirmation or a reversal of the Kobayashi opinion mentioned above. I would appreciate a written and oral response by February 9, 2005. On this day at 5 p.m. at the Planning Commission meeting room, a citizen stakeholders group will be convening a four-session series of meetings to study and address issues relating to vacation rentals. We would like to request your presence to assist the group in understanding the issues.

1. "Dwelling" is defined in Section 8-1.5 Kauai County Code as "a building or portion thereof designed or used exclusively for residential occupancy and having all necessary facilities for permanent residency...." How can transient vacation rentals which are meant for short term occupancy be allowed in residentially zoned lands?

Memo to Lani Nakazawa, County Attorney

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2. Although the term "residential" is not defined in the CZO, the Merriam Webster Dictionary defines "residential" as "used as a residence or by residents." The word "residents," which is also not defined in the CZO, is defined in *Black's Law Dictionary* as "any person who occupies a dwelling within the State, has a present intent to remain within the State for a period of time, and manifests the genuineness of that intent by establishing an ongoing physical presence within the State together with an indicia that his presence within the State is something other than merely transitory in nature." The generally recognized definitions by themselves indicate that residential zoned lands were intended for long term residential use rather than vacation rental use. This is supplemented by the stated purposes of Residential District and Resort District. The purpose of Residential Districts is "to provide the opportunity for all groups of persons to obtain adequate housing within each area of the County suitable for residential use...." The purpose of Resort Districts, on the other hand, is "[T]o create and protect attractive areas ... to accommodate the needs and desires primarily of visitors, tourists and transient guests." One would suspect that if the authors of the CZO would have wanted to accommodate visitors or transient guests, they would have used a different terminology.

3. The North Shore Zoning Maps indicate that resort zoning is limited to the Princeville area, and the North Shore Development Plan states that "all visitor accommodation resort units should be confined to the Princeville Resort area." How does this reconcile with the existence of transient vacation rentals beyond Princeville?

4. Certain types of residential uses and structures are permitted in a residential district (basically single-family and multi-family units, parks and home businesses, and adult family and care homes). Use Permits are required for other unlisted types of residential uses and structures pursuant to Sections 8-3.3 and 8-3.4, Kaua'i County Code. If residential care homes and adult family group living homes require a use permit and provide a more long term occupancy, why wouldn't a short term non-residential use such as a transient vacation rental require a use permit under the subsection 19 which states for "any other use or structure which the Planning Director finds to be similar in nature to those listed in this Section and appropriate to the district?"

5. The basic premise of the Kobayashi opinion seems directly contrary to the basic premise of zoning—that unless a use or structure is explicitly permitted it is not allowed. The basic premise of the Kobayashi opinion appears unworkable as it is impossible to list every use or structure that one might want to disallow.

Please call me if you have any questions. I thank you in advance for your assistance on this matter.

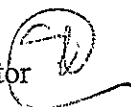
COUNTY OF KAUAI
PLANNING DEPARTMENT
4444 RICE STREET, SUITE 473
LIHUE, KAUAI, HAWAII 96766

COPY

MEMORANDUM

DATE: May 2, 2005

TO: JoAnn A. Yukimura
Planning Committee Chair

FROM: Ian K. Costa 
Planning Director

SUBJECT: Transient Vacation Rentals

Please pardon the delay in responding.

The following is in response to the questions and comments of your January 27, 2005 memorandum:

1. The definition of "dwelling" pursuant to Section 8-1.5 (35) "means a building or portion thereof designed or used exclusively for residential occupancy and having all necessary facilities for permanent residency **such as living, sleeping, cooking, eating and sanitation.**" Your memorandum excluded the portion of the definition shown in bold underlined. Consequently, the definition of "dwelling" in its entirety really relates to standard of design and function and not a standard to regulate the duration of stay.
2. Please understand that relative to the Residential District, the CZO standards are oriented mainly towards the design of the dwelling (density, setback, height, lot coverage, etc.) rather than occupancy and the duration of stay.
3. The statement in the 1985 North Shore Development Plan that "all visitor accommodation resort units should be confined to the Princeville Resort area" is a goal and not a regulatory standard. More recently, the 2000 General Plan recognizes the need for alternate types of visitor accommodations and consequently, may differ somewhat in its outlook on the subject matter from the 1985 North Shore Development Plan.
4. Adult Family Boarding and Family Care Homes that comply with all State Department of Social Services and Housing and State Department of Health rules, regulations and requirements are outright permitted if not adversely affecting the neighborhood or community. Relative to a single-family dwelling being used as a TVR, we are adhering to the Kobayashi opinion that there are no CZO standards for regulating such a use.

Consequently, a single-family dwelling in TVR use does not require a Use Permit and is viewed as a single-family dwelling unit.

5. We would prefer that the County Attorneys Office respond to your fifth point regarding the Kobayashi opinion.

Please feel free to call me at ext. 677 if you have any questions on this matter.

CC: County Attorney
Mayor